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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 441

DOUGLAS BRYANT AND DORIS MAY BRYANT,
Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS AND THE CITY OF CHICAGO,
Respondents,

AND

THE PEOPLE OF THE STATE OF ILLINOIS ON THE RELATION OF DOUGLAS BRYANT AND DORIS MAY BRYANT,
Petitioner,

vs.

MAURICE W. LEE, MAGISTRATE OF THE MUNICIPAL COURT OF CHICAGO, FIRST MUNICIPAL DISTRICT OF THE CIRCUIT COURT OF COOK COUNTY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

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INDEX.

PAGE

OPINION BELOW 2

QUESTION PRESENTED 2

CONSTITUTIONAL PROVISIONS 4

STATEMENT OF THE CASE 4

REASONS FOR GRANTING WRIT 9

CONCLUSION 17

APPENDIXES:

A. Orders of Illinois Supreme Court 19

B. Statutory and Ordinance Provisions re Imprisonment for Failure to Pay Fines 26

C. Illinois Court Rules and Statutes Dealing With Right of Indigent to Transcript 28

D. Papers From the Case of The People of the State of Illinois v. Luther Sanders 31

CITATIONS.

Cases:

Anders v. California, 387 U. S. 738 (1967) 11

Arbo v. Hegstrom, 261 F. Supp. 397 (U. S. D. C. D. Conn., 1966) 13

Burns v. Ohio, 360 U. S. 252 (1959) 11

DeJoseph v. Conn., 3 Conn. Cir. 624, cert. den. 385 U. S. 982 (1966) 16

Douglas v. California, 372 U. S. 353 (1963) 11

Draper v. Washington, 372 U. S. 487 (1963) 11

Eskridge v. Washington State Board, 357 U. S. 214 (1958) 11

Griffin v. Illinois, 351 U. S. 12 (1956) 9, 16

Hamilton v. Alabama, 376 U. S. 650 (1964) 5

Lane v. Brown, 372 U. S. 477 (1963) 11

People v. Mallory, 147 N. W. 2d 66 (Mich. Sup. Ct., 1967) 16
Preston v. Municipal Court, 188 Cal. App. 2d 76 (Dist. Ct. App., 1961) 16
Skinner v. Oklahoma, 316 U. S. 535 (1942) 13
Smith v. Bennett, 365 U. S. 708 (1961) 11
The People v. Jenkins, 322 Ill. 33 (1926) 10
Winter v. Beck, 239 Ark. 1151, cert. den. 385 U. S. 907 (1966) 16

Constitutional Provisions:

Fourteenth Amendment to the Constitution of the United States of America 4

Statutes:

18 U. S. C. § 3006A(b) 13
28 U. S. C. § 1257(3) 2
Ill. Rev. Stat. Ch. 24, § 1-2-9 5
Ill. Rev. Stat. Ch. 38, § 1-7(k) 5
Ill. Rev. Stat. Ch. 38, § 2-7 11
Ill. Rev. Stat. Ch. 38, §§ 11-12, 11-16, 12-4, 12-6, 12-7, 12-8, 14-4, 25-1(c), 31-4, 31-5, 32-2, 32-6, 32-8, 33-1, 33-3, 37-1, and 39-2 13
Ill. Rev. Stat. Ch. 38, §§ 12-3a2, 12-1 and 21-1(a) .. 4
Ill. Rev. Stat. Ch. 38, § 102-20 10
Ill. Rev. Stat. Ch. 38, § 121-5 10
Ill. Rev. Stat. Ch. 38, § 121-13(a) 10
West Virginia Code Ann. § 51-7-7 16

Court Rules:

Illinois Supreme Court Rule 65-1 (1956) 9
Illinois Supreme Court Rule 27(9)(b) (1963) 10
Illinois Supreme Court Rule 607(b) 10
Michigan Supreme Court Rule 785.4(1) 16

Chicago Ordinance Provisions:

Municipal Code of Chicago §§ 11-33 and 193-1 4
Municipal Code of Chicago § 24-7 5

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

Petitioners pray that a writ of certiorari issue to review the orders of the Illinois Supreme Court in the above-en-

titled cases which denied petitioners' request for transcript of the report of proceedings at their trial so that they could prosecute an effective appeal.

OPINION BELOW.

The Illinois Supreme Court entered two orders requested by petitioners and vacated both of them. It has, however, issued no opinions. Copies of the relevant orders of that Court are set out in Appendix A to this Petition.[1]

JURISDICTION.

The final order of the Illinois Supreme Court denying petitioners a transcript of the report of proceedings at their trial was entered on March 28, 1968 in Case No. 40281, and petitioners' motion for reconsideration was denied by order of May 28, 1968. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(3).

QUESTION PRESENTED.

Does the refusal of the State of Illinois to furnish these petitioners with a transcript of the report of proceedings at their trial violate rights of the petitioners guaranteed by the Fourteenth Amendment to the Constitution of the United States of America where:

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1. In Case No. 40300 the Illinois Supreme Court entered orders (1) granting petitioners' motion for leave to file a petition for mandamus, (2) vacating the order granting petitioners' motion for leave to file a petition for mandamus, and (3) denying petitioners' motion for reconsideration of its order of vacation.

In Case No. 40281 the Illinois Supreme Court entered orders (1) directing the trial court to conduct a hearing to determine whether the petitioners are indigent and directing the trial court to provide petitioners with portions of the report of proceedings of their trial if it determines that they are indigent, (2) vacating the order directing the trial court to provide petitioners with portions of the report of proceedings, and (3) denying petitioners' motion for reconsideration of its order of vacation.

(1) petitioners have been convicted of municipal ordinance violations and misdemeanors and have been sentenced to penalties which could result in jail terms of 60 days and over one year (five months and 220 days), respectively;

(2) petitioners have preserved for appeal serious constitutional questions, including whether they were deprived of Constitutional rights when the trial court refused to permit them to cross examine the arresting police officers to show their bias against petitioners, when the trial court refused to instruct the jury that petitioners enjoyed a right of self-defense against police officers who allegedly attacked them and when the trial court repeatedly permitted the prosecution to refer to petitioners by their ghetto, racial nicknames;

(3) the law of Illinois provides for appellate review of convictions of misdemeanors and ordinance violations, but an effective appeal based on questions of the type raised by petitioners can be prosecuted only if supported by the transcript;

(4) petitioners cannot purchase the transcript because they are indigent;[2]

(5) the court rule under which petitioners were denied transcript authorizes free transcript in some cases where the sentences imposed are less severe than those imposed on petitioners; and

(6) the trial courts in Illinois exercise an unrestricted power to order or refuse to order transcript for indigents convicted of misdemeanors based on a

2. As discussed below (page 8, *infra*), the trial court held a hearing on petitioners' indigency and found that they were both indigent. Because of the importance of the question raised herein the Roger Baldwin Foundation of the American Civil Liberties Union is paying the costs incurred in filing this Petition, including the filing fee, the cost of printing, and the cost of obtaining a certified copy of the record before the Illinois Supreme Court.

determination as to whether "such transcript is justified," although there are no criteria for the trial courts to follow in exercising this power and although the trial court denied petitioners' request for transcript solely on the ground that they had not been convicted of felonies.

CONSTITUTIONAL PROVISIONS.

This case involves provisions of Section 1 of the Fourteenth Amendment to the United States Constitution:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE.

On July 1, 1966, in the case of the *People of the State of Illinois and the City of Chicago* v. *Doris May Bryant and Douglas Bryant, et al.*, Illinois Supreme Court No. 40281, petitioner Doris May Bryant was found guilty of the State offenses of battery, assault (two charges) and criminal damage to property (Ill. Rev. Stat. Ch. 38, §§ 12-3a2, 12-1 and 21-1(a)). She was also found guilty of the Chicago ordinance offenses or resisting or interfering with a police officer and disorderly conduct (Municipal Code of Chicago, §§ 11-33 and 193-1). Petitioner Douglas Bryant was found guilty of the Chicago ordinance offenses of resisting or interfering with a police officer and disorderly conduct. All charges arose from an incident which occurred in Chicago's near west side.

The trial in this case lasted over three weeks. Before, during and after the trial petitioners raised numerous, seri-

ous questions of both a constitutional and non-constitutional nature. (For example, they objected to the prosecuting attorneys' continually referring to them as "Cool Breeze" and "Baby Sister" instead of Mr. and Mrs. Bryant.)[3] On October 17, 1966 Mrs. Bryant was sentenced to a term of five months in a penal institution and to an $1,100 fine. Mr. Bryant received a $300 fine. Since Illinois law provides that a person who does not pay a fine may be imprisoned until the fine is satisfied at the rate of $5 per day, petitioners (both of whom are indigent) are subject to jail terms of 60 days and over one year (five months and 220 days), respectively.[4] Petitioners both filed timely notices of appeal to the Supreme Court of Illinois.

In order for petitioners to preserve for appeal the issues they raised at trial, it is necessary that they have the transcript of the report of proceeding at their trial. For

3. *Compare Hamilton* v. *Alabama*, 376 U. S. 650 (1964), in which the Court reversed a contempt conviction of a witness who refused to answer to her first name. Other objections raised by petitioners and preserved for appeal include objections to (a) the refusal of the Court to dismiss the charges because of an illegal interrogation of one of the petitioners, (b) statements made during jury selection that all defendants would take the stand, (c) the Court's refusal to permit cross-examination of the arresting police officers to show their bias against petitioners and their self-interest in having petitioners convicted, (d) the Court's refusal to instruct the jury on petitioners' right of self defense and (e) statements of the Court at the time of sentencing which evidenced prejudice against petitioners because of their indigency.

4. Ill. Rev. Stat. Ch. 24, § 1-2-9 and Ch. 38, § 1-7(k). Ch. 24, § 1-2-9 is subject to a reading which would make it possible to imprison petitioners for six months for each ordinance violation unless their fines were actually paid. So read, this section would subject petitioner Douglas Bryant to a jail term of a full year and would subject petitioner Doris May Bryant to a jail term of one year, five months and 160 days. Ill. Rev. Stat. Ch. 24, § 1-2-9 and Ch. 38, § 1-7(k) and the Chicago Ordinance providing for imprisonment for failure to pay a fine (Municipal Code of Chicago, § 24-7) are set out in appendix B. Petitioners neither admit the validity of the statutes and ordinance nor their applicability to petitioners in this case. However, these provisions for jailing persons who fail to pay fines are enforced in Illinois.

this reason petitioners filed petitions with the trial court in which they stated under oath that they are "without financial means to pay for the report of the proceedings at [their] trial'" and in which they requested that they "be furnished with a report of the proceedings at [their] trial." The trial court denied these petitions, without hearing, on the ground that since neither of the petitioners had been sentenced to a penitentiary, they were not entitled to the transcript.

Since it was not clear under Illinois law what procedure petitioners should follow to review the trial court's denial of their petitions to be furnished with transcript, petitioners filed three different motions with the Illinois Supreme Court: ((1)) a motion in Case No. 40281 (the case on appeal)) for an order requiring the trial court to hold a hearing on their petitions for transcript, which motion was denied by order dated December 1, 1966; (2) a motion in Case No. 40281 for an order directing the court reporter to transcribe his notes, which motion was not passed upon by the Court;[5] and ((3)) a motion for leave to file a petition for mandamus requesting that the trial court be directed to hold a hearing on their petitions for transcript, which motion was *granted* by order dated December 1, 1966.[6]

On January 9, 1967 the State's Attorney filed with the Illinois Supreme Court an "Answer to a Motion of Appellants for a writ of Mandamus" which, *inter alia*, stated that petitioners' counsel had "ready access" to the report of

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5. The Court finally ruled upon and denied this motion by Order dated March 28, 1968. See p. 8, n. 9, *infra*.

6. The mandamus proceeding, entitled "The people of the State of Illinois on the relation of Douglas Bryant and Doris May Bryant *v.* Maurice W. Lee, Magistrate of the Municipal Court of Chicago, First Municipal District of the Circuit Court of Cook County," was given Illinois Supreme Court No. 40300. A copy of the December 1, 1966 order is set out in Appendix A to this Petition.

proceedings and that this "ready access" "should militate against the extraordinary remedy of mandamus to secure still another copy." On February 3, 1967 petitioners filed a sworn Reply which pointed out that the unverified allegations in the State's Attorney's Answer were not true and that although a non-indigent codefendant of petitioners had the transcript of *part* of the report of proceedings (as did the State) important portions of the report had never been transcribed and petitioners' counsel did not have access even to the transcript of petitioners' codefendant (with respect to whom the jury could reach no verdict) because the codefendant needed the transcript in connection with his retrial.

On November 29, 1967 the Illinois Supreme Court vacated its December 1, 1966 order granting petitioners leave to file a petition for a writ of mandamus on the ground that it appeared from the State's Attorney's Answer that "a material question of fact is presented." Petitioners moved for reconsideration on the ground that there was no issue of fact since the allegations in the State's Attorney's Answer were simply untrue, but this motion for reconsideration was denied on January 9, 1968.[7]

However, two weeks later, in response to a motion of petitioners, the Illinois Supreme Court entered an order in Case No. 40281, dated January 24, 1968, which directed the trial court "to conduct a hearing to determine whether the defendants [petitioners] are indigent and whether [certain] portions of the proceedings were reported or are available . . ." The Court stated that, "If it is found that the defendants are indigent and that said portions of the proceedings were reported and are available, the magistrate is ordered to provide defendants with a copy of said por-

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7. Copies of the November 29, 1967 and January 9, 1968 orders are set out in Appendix A to this Petition.

tions.'"[8] The trial court conducted the hearing on February 23, 1968, and it found that petitioners are indigent and that the portions of the report of procedings were reported and are available. Accordingly, the trial court entered an order providing petitioners with a copy of the portions of the report of proceedings. However, on March 28, 1968, the Illinois Supreme Court, on its own motion, vacated its order of January 24, 1968.[9]

Petitioners moved for reconsideration of the Court's March 28, 1968 order, and this motion was denied by order of May 28, 1968. Petitioners have exhausted their remedies in the state courts and their plea to be furnished with the report of proceedings has been denied.[10]

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8. The January 24, 1968 order is set out in Appendix A hereof. On December 20, 1967 the charges against petitioners' co-defendant were dismissed and his transcript was then made available to petitioners for use in their appeal, a fact of which petitioners apprised the Court. The portions of the proceedings to which the Court's January 24, 1968 order referred were those which no party had had transcribed. They include:

1. Proceedings on the motion of City and State to consolidate the thirteen concerned cases for trial.
2. The jury selection.
3. The offers of proof made on behalf of defendants.
4. The closing arguments of the City and State, the defendants' objections thereto and motions based thereon.
5. Instructions to the jury.
6. All proceedings at the sentencing of the defendants herein.

9. The Court also ruled for the first time on petitioners' motion for an order requiring the court reporter to transcribe his notes of the trial proceedings (which motion was filed on November 28, 1966) and denied that motion. A copy of the Court's orders of January 24, 1968 and March 28, 1968 are set out in Appendix A hereto.

10. The Court's final order of May 28, 1968 is set out in Appendix A hereto. Understandably, and no doubt correctly, the court reporter is treating the trial court's order of February 23, 1968—which was entered in accordance with the vacated Illinois Supreme Court order of January 24, 1968—as void. Petitioners' counsel is advised that the court reporter began work on the transcript in accordance with the trial court's order but stopped work when it learned of the Illinois Supreme Court's March 28, 1968 order.

REASONS FOR GRANTING WRIT.

Petitioners respectfully submit that their petition for a writ of certiorari should be granted because (1) since this Court's landmark decision in *Griffin* v. *Illinois,* 351 U. S. 12 (1956), the right of an Illinois indigent to a transcript of the report of proceedings at his trial has been eroded, (2) the present law of Illinois, under which petitioners have been denied a transcript and therefore denied the right to prosecute an effective appeal, is wholly arbitrary and capricious and clearly unconstitutional, and (3) this is an appropriate time in our Nation's history (and this case is an appropriate vehicle) for the Court to announce that no American citizen charged with a crime can be denied, because of indigency, rights enjoyed by the affluent.

Although the Illinois Supreme Court never explained its decision to deny transcript to petitioners, apparently it decided that petitioners were not entitled to transcript because (in the language of the Supreme Court rule in effect when petitioners were convicted) no "sentence to the penitentiary" was imposed upon them or because (in the language of the present rule) they were not "convicted of a felony." Had petitioners been convicted a few years earlier, closer in time to this Court's ruling in *Griffin* v. *Illinois, supra,* their request for transcript would have been granted.

In 1956, after this Court's *Griffin* decision, the Illinois Supreme Court promulgated Rule 65-1 which provided that, "Any person sentenced to imprisonment" and "without financial means with which to obtain the transcript of the proceedings at his trial" was entitled to free transcript. As is clear from this language:

> "The rule applie[d] not only where the conviction is of a felony but also where it is of a misdemeanor."[11]

In 1961 the State legislature enacted a statute granting the right to free transcript to any person without financial means to obtain the transcript "upon imposition of any sentence in a criminal case." Ill. Rev. Stat., Ch. 38, § 121-13(a). In so doing, the legislature apparently intended to extend the right to transcript to those who were punished by the imposition of a fine, for the phrase "any sentence" almost surely encompasses both imprisonment and a fine. ("Sentence denotes the action of a court of criminal jurisdiction declaring the consequences to a convict of the fact of guilt conferred or ascertained by a verdict." *The People* v. *Jenkins,* 322 Ill. 33, 38 (1926). " 'Sentence' is the punishment imposed on the defendant by the court." Code of Criminal Procedure of 1963; Ill. Rev. Stat., Ch. 38, § 102-20.)

However, in 1963—seven years after the *Griffin* decision —the Illinois Supreme Court promulgated a new rule which took the right to transcript away from persons sentenced to a fine or a jail term and which restricted that right to those poor persons upon whom there was an "imposition of any sentence to the penitentiary." Rule 27(9)(b).[12] And in 1967 the Supreme Court promulgated the present rule which provides for transcript to poor persons who are "convicted of a felony." Rule 607(b), Ill. Rev. Stat., Ch. 110A, § 607(b). " 'Felony' means an offense punishable with death or by imprisonment in the

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11. Historical and Practice Notes to Rule 65-1. Smith-Hurd Illinois Annotated Statutes, Permanent Edition, Chapter 110, § 101.65-1, p. 618.

12. Ill. Rev. Stat. (1965), Ch. 110, § 101.27 (9)(b). Apparently the Court's authority for promulgating this rule is found in the Code of Criminal Procedure of 1963; Ill. Rev. Stat., Ch. 38, § 121-5, which provides that, "The Record on Appeal and procedures on review shall be governed by Supreme Court Rules. . . ."

penitentiary." Ill. Rev. Stat., Ch. 38, § 2-7. The present rule, therefore, is identical to the rule promulgated in 1963, except that now a poor person convicted of a crime "punishable" by imprisonment in the penitentiary (irrespective of his actual sentence or punishment) is entitled to free transcript while under the 1963 rule only persons actually sentenced to the penitentiary were entitled to transcript.[13]

This Illinois rule which restricts the right to transcript to persons convicted of a felony (and which thereby denies transcript to these petitioners) is clearly unconstitutional.

First, the rule is unconstitutional because it discriminates against defendants who are convicted of non-felony offenses and who cannot afford to purchase the transcript. As this Court held in *Griffin* v. *Illinois, supra*:

> "It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. [citing cases] But that is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty." 351 U. S. at 18.
>
> *"Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts."* [Emphasis added.] 351 U. S. at 19.

The rule of *Griffin* has been followed and expanded in *Eskridge* v. *Washington State Board*, 357 U. S. 214 (1958); *Burns* v. *Ohio*, 360 U. S. 252 (1959); *Smith* v. *Bennett*, 365 U. S. 708 (1961); *Douglas* v. *California*, 372 U. S. 353 (1963); *Lane* v. *Brown*, 372 U. S. 477 (1963); *Draper* v. *Washington*, 372 U. S. 487 (1963); and *Anders* v. *California*, 386 U. S. 738 (1967).

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13. The Illinois court rules and statutes dealing with the right to transcript from 1956 to the present are set out in Appendix C to this Petition.

Petitioners recognize that in none of these cases has the Court specifically ruled that an indigent convicted of a misdemeanor is entitled to a transcript of his trial proceedings in order to prosecute an appeal, for none of these cases involved a misdemeanor. However, the reasoning of these cases is clearly applicable to the indigent misdemeanant. The State of Illinois is not required to provide for appellate review of convictions of misdemeanors and ordinance violations. However, Illinois does provide for such appellate review and it must, therefore, provide as adequate appellate review for destitute defendants as for defendants who have money enough to buy transcripts.

Second, even if there are some cases where the punishment imposed on a poor person is so minor that he can constitutionally be deprived of rights to appeal enjoyed by the more affluent, surely this is not such a case. One of the petitioners here is subject to a jail term in excess of a year.

Third, even if there is some constitutional cut-off which permits a State to deny an effective appeal to poor persons subjected to minor punishment, the classification of poor persons into two classes—one of which is permitted an effective appeal and one of which is denied an effective appeal—must be a reasonable one. The classification may not involve an "invidious discrimination." The Illinois rule fails to meet the test of reasonableness.

Since the rule grants the right to transcript only to persons "convicted of a felony," (i.e., to persons convicted of an offense "punishable with death or by imprisonment in the penitentiary") the right to transcript is made to depend on how an offense is "punishable" rather than the actual punishment meted out to the defendant, and a defendant who receives a relatively light sentence may enjoy the right to transcript while a defendant who receives a relatively

harsh sentence may be denied that right. Thus, the Illinois rule denies transcript to some persons subjected to jail terms (over one year for one of the petitioners) while granting transcript to some persons who serve no term at all (e.g., persons convicted of a felony who receive probation). The Illinois rule denies transcript to a poor person convicted of two or more misdemeanors although his total jail term may easily exceed the term of a person convicted of one felony. There are at least 17 criminal offenses in Illinois for which the trial judge has discretion to sentence the defendant to a penal institution other than the penitentiary for less than a year or to the penitentiary for more than a year.[14] Had petitioner Doris May Bryant been sentenced to two months in jail for one of these offenses, she would have been granted free transcript for they are "punishable . . . by imprisonment in the penitentiary" and therefore are "felonies," but she was denied transcript upon being sentenced to five months in jail for battery.

The right to court-appointed trial counsel may depend on how the offense with which the defendant is charged is "punishable," or the amount of punishment the defendant might receive. See, *e.g.*, 18 U. S. C. § 3006A(b) regarding the right to counsel in criminal cases in the Federal Courts. However, it makes no sense at all for the right to transcript for purposes of appeal to depend on how the defendant *might have been punished* when it is known how he actually *was punished.*[15] In *Skinner* v.

14. Ill. Rev. Stat., Ch. 38, §§ 11-12 (Bigamy), 11-16 (Pandering), 12-4 (Aggravated battery), 12-6 (Intimidation), 12-7 (Compelling confession), 12-8 (Duelling), 14-4 (Eavesdropping), 25-1(c) (Mob action), 31-4 (Obstructing justice), 31-5 (Concealing fugitive), 32-2 (Perjury), 32-6 (Unauthorized acts), 32-8 (Tampering), 33-1 (Bribery), 33-3 (Official misconduct), 37-1 (Property forfeiture), 39-2 (Usury).

15. The distinction which the Illinois rules makes between a "felony" and a "misdemeanor" is indefensible. As the Court stated in *Arbo* v. *Hegstrom,* 261 F. Supp. 397, 401 (U. S. D. C. D.

Oklahoma, 316 U. S. 535 (1942), the Court held that a statute which authorized sterilization for persons convicted of stealing chickens but not for persons convicted of embezzling money violated the equal protection guarantee of the Fourteenth Amendment. Surely the Illinois rule permitting an effective appeal for indigents convicted of usury and sentenced to a two month jail term while denying effective appeal to indigents convicted of battery and sentenced to a five month jail term is just as violative of the equal protection guarantee.

Finally, even if the Illinois Supreme Court rule, standing alone, were constitutional, the law of Illinois is not. For the Illinois rule providing for transcript to felons is supplemented by authority given to the trial courts to grant transcript to misdemeanants when they determine that "such transcript is justified." Set out in Appendix D to this Petition are copies of the Complaint, Petition for Transcript, "Forma Paupris Motion," and docket sheet, along with a copy of a letter from the Court Coordinator to the trial court, in the case of *The People of the State of Illinois* v. *Luther Sanders,* 67 MC 1-648075, in the First Municipal District of the Circuit Court of Cook County, Illinois.[16] As these papers demonstrate, Mr. Sanders was convicted of a misdemeanor, was sentenced to a six-month jail term and was granted free transcript by order of the trial court. The trial court in that case acted pursuant to instructions of the Court Coordinator that:

"Where a transcript is ordered and a pauper's peti-

Conn., 1966), "It would be a gross perversion of solid, constitutional doctrine to find a rational distinction between one year in jail (a misdemeanor) and one year and a day in prison (a felony)." The Illinois definition of "felony" makes the felony-misdemeanor distinction even more meaningless.

16. These papers were included in the record before the Illinois Supreme Court in this case, attached to petitioners' motion for extension of time filed June 15, 1968.

> tion requesting the same, accompanies the request, it is up to the Court whether such transcript is justified.
>
> * * * * *
>
> "If you feel justified in ordering the transcript, enter the order on the half-sheet [docket sheet] and return to us."

The power of the Illinois trial courts to order transcript for indigent misdemeanants is not set out in any statute, court rule, or reported decision, and no Illinois statute, court rule or reported opinion establishes any criteria for the trial court to follow in determining whether a "transcript is justified." Rather, the trial court has unlimited discretion, which it must exercise without the help of any guidelines, in determining whether or not to grant transcript. Indeed, petitioners were denied transcript solely on the ground that they had not been convicted of felonies, without the court making any determination as to whether transcript was justified in their case. Petitioners were not, therefore, the victims so much of an arbitrary and unreasonable classification as they were the victims of a system which grants transcript to some indigents and denies transcript to others without making any classification whatsoever.

It is apparent from this case that petitioners and those persons in like circumstances have no place to turn but to this Court. The Illinois Supreme Court considered this case for a year and a half, reversed itself twice, but issued no explanatory opinion. And the State's Attorney's office, apparently desirous of avoiding the issue, went so far as to tell the Court that petitioners did not need the transcript because petitioners' counsel had "ready access" to it.[17]

17. The State's Attorney's Office ignored the request of petitioners' counsel that it correct this erroneous statement made to the Court and explain to the Court that, in fact, neither petitioners nor petitioners' counsel had possession of or access to the transcript. (A copy of the letter from petitioners' counsel to the

Petitioners have attempted to determine the state of the law in the other jurisdictions but they were not able to do so. However, there is every reason to believe that the need to clarify the scope of *Griffin* v. *Illinois*, *supra*, is not limited to the State of Illinois.[18]

It is often stated that there is need for a greater respect for the law on the part of our country's citizens. Unfortunately, the very persons who are most often accused of having insufficient respect for the law have insufficient reason to respect the courts which are enforcing the law. As was stated in the Report of the National Advisory Commission on Civil Disorders:

> "The belief is pervasive among ghetto residents that lower courts in our urban communities dispense 'assembly-line' justice; that from arrest to sentencing, the poor and uneducated are denied equal justice with the affluent, that procedures such as bail and fines have been perverted to perpetuate class inequities. We have found that the apparatus of justice in some areas has itself become a focus for distrust and hostility. Too often the courts have operated to aggravate rather than relieve the tensions that ignite and fire disorders." Bantam Books edition (1968), p. 337.

State's Attorney's Office making this request is attached to Petitioners' Motion for Reconsideration filed in case No. 40300 on December 12, 1967.) The record is, of course, clear that petitioners do not have the transcript which was in the process of being prepared for them pursuant to the Illinois Supreme Court's January 24, 1968 order until the Court vacated that order on March 28, 1968.

18. The practice of the states vary. Some states, e.g., West Virginia and Michigan, follow the prior Illinois practice of granting transcript to all indigent misdemeanants. (See West Virginia Code Annotated, Sec. 51-7-7, Michigan Supreme Court Rule 785.4(1) and *People* v. *Mallory*, 147 N. W. 2d 66 (Mich. Sup. Ct., 1967).) Some states, e.g., Connecticut and Arkansas, deny transcript to misdemeanants. (See *DeJoseph* v. *Conn.*, 3 Conn. Cir. 624, 222 A. 2d 752, cert. den. 385 U. S. 982 (1966); and *Winter* v. *Beck*, 239 Ark. 1151, 397 S. W. 2d 364, cert. den. 385 U. S. 907 (1966).) And some states, e.g., California, grant transcript to misdemeanants in some, but not all, cases. (See *Preston* v. *Municipal Court*, 188 Cal. App. 2d 76 (Dist. Ct. App., 1961.)

In most cases—hopefully in all but a few cases—the distrust and hostility which ghetto residents feel for the lower courts are without foundation. But if they are denied the right to air their complaints before the appellate courts—a right which they know is enjoyed and exercised by the more affluent—they can hardly be expected to feel that their grievances have been given a fair hearing. It has been, and it will continue to be, difficult to convince residents of the ghetto to respect a legal system which denies to them the very rights which protect those who decry the lack of respect for the law.

It is respectfully submitted that at this time in our Nation's history, a trial court which permits prosecuting attorneys to refer to the defendants as "Cool Breeze" and "Baby Sister" should be subject to adequate appellate review, irrespective of the wealth or poverty of the defendants.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

R. Dickey Hamilton,
Attorney for Petitioners.

Of Counsel:
Devoe, Shadur, Mikva & Plotkin,
208 South La Salle Street,
Chicago, Illinois 60604,
ANdover 3-3700.

APPENDIX A.

IN THE SUPREME COURT OF ILLINOIS.

PEOPLE OF THE STATE OF ILLINOIS AND THE CITY OF CHICAGO, *Plaintiffs-Appellee.* *vs.* DOUGLAS BRYANT AND DORIS MAY BRYANT.	No. 40281

ORDER.

The order heretofore entered herein denying the motion of defendants for an order requiring the magistrate to conduct a hearing is vacated and the magistrate is ordered to conduct a hearing to determine whether the defendants are indigent and whether the following portions of the proceedings were reported or are available:

1. Proceedings on the motion of City and State to consolidate the thirteen concerned cases for trial.
2. The jury selection.
3. The offers of proof made on behalf of defendants.
4. The closing arguments of the City and State, the defendants' objections thereto and motions based thereon.
5. Instructions to the jury.
6. All proceedings at the sentencing of the defendants herein.

If it is found that the defendants are indigent and that said portions of the proceedings were reported and are available, the magistrate is ordered to provide defendants with a copy of said portions. If the magistrate does not so find, he shall make his findings a part of the record and shall certify them together with any evidence heard on the question to this Court.

ENTER:

DANIEL P. WARD,
Justice of the Supreme Court.

Dated: January 24, 1968.

BE IT REMEMBERED, that, to-wit: on the 28th day of March, A. D. 1968, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

PEOPLE STATE OF ILLINOIS, *et al.*, *Appellees,*
No. 40281 *vs.*
DOUGLAS BRYANT, *et al.*, *Appellants.*
} Appeal from Circuit Court, Cook County (Municipal Division)

And now, on this day, the Court being fully advised of and concerning the premises;

IT IS HEREBY ORDERED on the Court's own motion that the order entered January 24, 1968, which vacated a prior order and directed that a hearing be held to determine if appellants were indigent, and which ordered that a partial report of proceedings be furnished appellants without cost if appellants were found to be indigent be and the same is vacated. It is further ordered that the motion that appellants be furnished a report of proceedings without cost be, and the same is, denied and the time for filing a report of proceedings in the trial court is extended to April 25, 1968. It is considered by the Court that it is unnecessary to consider the motion by appellants for leave to file a supplementary fact memorandum and that an order be entered to furnish appellants with the remainder of the report of proceedings.

BE IT REMEMBERED, that, to-wit: on the 28th day of May, A. D. 1968, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

PEOPLE STATE OF ILLINOIS, *et al.*, *Appellees*,
No. 40281 *vs.*
DOUGLAS BRYANT, *et al.*, *Appellants.*
} Appeal from Circuit Court, Cook County (Municipal Division)

And now, on this day, the Court having duly considered the motion by appellants for reconsideration of order entered March 28, 1968, and being now fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the motion by appellants for reconsideration of order entered March 28, 1968, be, and the same is, denied.

BE IT REMEMBERED, that, to-wit: on the 29th day of November, A. D. 1967, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

PEOPLE EX REL DOUGLAS BRYANT AND DORIS MAY BRYANT, *Petitioners,* vs. MAURICE W. LEE, Magistrate of the Municipal Court of Chicago, First Municipal District of the Circuit Court of Cook County, *Respondent.*	Mandamus.

No. 40300

And now, on this day, the Court having considered the petition, answer and reply, and being fully advised of and concerning the premises, and it appearing from said petition, answer and reply that a material question of fact is presented, the order granting leave to file a petition for writ of mandamus is hereby vacated and the petition is dismissed.

BE IT REMEMBERED, that, to-wit: on the 1st day of December, A. D. 1966, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

PEOPLE EX REL. DOUGLAS BRYANT, *et al.*,
Petitioners,
No. 40300 *vs.* Mandamus
MAURICE W. LEE, Magistrate of the Municipal Court of Chicago, etc.,
Respondent.

And now, on this day, the Court having duly considered the motion by petitioners for leave to file an original petition for writ of mandamus as poor persons, and being now fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the motion by petitioners for leave to file an original petition for writ of mandamus as poor persons be, and the same is, allowed and it is further ordered that summons issue and return be filed within ten days.

BE IT REMEMBERED, that, to-wit: on the 9th day of January, A. D. 1968, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

PEOPLE EX REL. DOUGLAS BRYANT, *et al.*, *Petitioners,*
No. 40300 *vs.*
MAURICE W. LEE, Magistrate of the Municipal Court of Chicago, etc., *Respondent.*
Mandamus.

And now, on this day, the Court having duly considered the motion by petitioners for reconsideration of order vacating prior order granting leave to file petition for writ of mandamus and dismissing said petition and for leave to amend petition, and being now fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the motion by petitioners for reconsideration of order vacating prior order granting leave to file petition for writ of mandamus and dismissing said petition and for leave to amend petition be, and the same is, denied.

APPENDIX B.

Statutory and Ordinance Provisions Subjecting Defendants Who Fail to Pay Fines to Imprisonment.

Ill. Rev. Stat., Ch. 38, § 1-7(k) provides for the imprisonment of persons convicted of a state offense who fail to pay their fines:

> "A judgment of a fine imposed upon an offender may be enforced in the same manner as a judgment entered in a civil action; Provided, however, that in such judgment imposing the fine the court may further order that upon nonpayment of such fine, the offender may be imprisoned until the fine is paid, or satisfied at the rate of $5.00 per day of imprisonment; Provided, further, however, that no person shall be imprisoned under the first proviso hereof for a longer period than 6 months."

Ill. Rev. Stat., Ch. 24, § 1-2-9 provides for the imprisonment of persons convicted of a municipal ordinance who fail to pay their fines:

> "The person upon whom any fine or penalty is imposed, upon the order of the court or magistrate before whom the conviction is had, may be committed to the county jail as provided in Section 11-3-2 or to any place provided by ordinance for the incarceration of offenders until the fine, penalty, and costs are fully paid. No imprisonment, however, shall exceed 6 months for any one offense.
>
> "The corporate authorities may provide by ordinance that every committed person shall be required to work at whatever labor his strength permits, within and without the place of incarceration, not to exceed 10 hours each working day. The committed person shall be allowed, exclusive of his board, a credit of $5 for each day's work on account of the fine, penalty, and costs."

Section 24-7 of the Municipal Code of Chicago provides for the satisfaction of fines through imprisonment:

> "Every person committed to the house of correction for a violation of any City ordinance shall be allowed for each day's work, exclusive of his board, the sum of five dollars, which shall be applied in payment and satisfaction of the fine and costs imposed upon such person."

APPENDIX C.

Illinois Court Rules and Statutes Dealing With Right of Indigent to Transcript.

In response to the Court's decision in *Griffin* v. *Illinois*, 351 U. S. 12 (1956), the Illinois Supreme Court, in 1956, promulgated Rule 65-1 giving convicted indigents who were "sentenced to imprisonment" the right to a free transcript of the proceedings at their trial. Rule 65-1 provided that:

> "Any person sentenced to imprisonment after April 23, 1956, may file, in the court in which he was convicted, a petition requesting that he be furnished with a stenographic transcript of the proceedings at his trial. The petition shall be verified by the petitioner and shall state facts showing that he was at the time of his conviction and is at the time of filing the petition without financial means to pay for the transcript. If the judge who imposed sentence, or in his absence any other judge of the court, finds that the defendant is without financial means with which to obtain the transcript of the proceedings at his trial, he shall order the reporter to transcribe an original and copy of his notes. . . ."

In 1961 the State legislature enacted a statute which broadened the right to transcript to indigents upon whom there was an "imposition of any sentence," presumably including a fine. After codification in 1963 this statute, Ill. Rev. Stat., Ch. 38, § 121-13(a), provided that:

> "Upon imposition of any sentence in a criminal case a defendant may file in the trial court a petition requesting that he be furnished with a transcript of the proceedings at his trial. The petition shall be verified by the petitioner and shall state facts showing that he was at the time of his conviction and is at the time of filing the petition without financial means to pay for

the transcript. If the trial judge who imposed sentence or in his absence any judge of the court finds that the defendant is without financial means with which to obtain the transcript of the proceedings at his trial he shall order the Official Court Reporter to transcribe an original and copy of his notes of the proceedings at the trial."

In 1963 the Illinois Supreme Court promulgated Rule 27(9)(b) which restricted the right to transcript to indigents upon whom there was an "imposition of any sentence to the penitentiary."

> "Upon imposition of any sentence to the penitentiary, except in cases in which the defendant has been convicted upon a plea of guilty, the defendant may file in the court in which he was convicted, a petition requesting that he be furnished with a report of the proceedings at his trial. The petition shall be verified by the petitioner and shall state facts showing that he was at the time of his conviction, and, is at the time of filing the petition, without financial means to pay for the report. If the judge who imposed sentence, or in his absence any other judge of the court, finds that the defendant is without financial means with which to obtain the report of the proceedings at his trial, he shall order the court reporter to transcribe an original and copy of his notes."

In 1967 the Illinois Supreme Court promulgated present Rule 607(b) which provides for transcript to indigents who are "convicted of a felony."

> "In all cases in which the defendant is convicted of a felony, and in all cases in which a sentence of death is imposed, the defendant may petition the court in which he was convicted for a report of proceedings at his trial. The petition shall be verified by the petitioner and shall state facts showing that he was at the time of his conviction, and is at the time of filing the petition, without financial means to pay for the report. If the judge who imposed sentence, or in his absence

any other judge of the court, finds that the defendant is without financial means with which to obtain the report of proceedings at his trial, he shall order the court reporter to transcribe an original and copy of his notes. The original of the report shall be certified by the reporter and filed with the clerk of the trial court as provided below, and the copy shall be certified by the reporter and delivered to the defendant without charge. The reporter who prepares a report of proceedings, pursuant to an order under this rule shall be paid the same fee for preparing the transcript as is provided by law for the compensation of reporters for preparing transcripts in other cases."

EXHIBIT D.

(Court Branch) (Court Date)

JOSEPH J. McDONOUGH, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

CCMC-1-225 NEW 2-65 MISDEMEANOR

STATE OF ILLINOIS } ss
COUNTY OF COOK } THE CIRCUIT COURT OF COOK COUNTY

The People of the State of Illinois
Plaintiff

v.

Luther Sanders
Defendant

COMPLAINT

No. _____

Sam Palmer
(Complainant's Name Printed or Typed) complainant, now appears before

The Circuit Court of Cook County and in the name and by the authority of the People of the State of Illinois

states that Luther Sanders (defendant) has, on or about

9 Apr. 67 (date) at 13120 So. Ellis Ave (Place of offense)

committed the offense of Theft (offense) in that he

Knowingly obtained unauthorized control over mens clothing of the value of $140.00, the property of Checker Cleaners, with the intent to deprive said owner Checker Cleaners of the use and benifit of said property.

in violation of Chapter 38 Section 16-1(a)1

ILLINOIS REVISED STATUTE AND AGAINST THE PEACE AND DIGNITY OF THE PEOPLE OF THE STATE OF ILLINOIS.

Sam Palmer
(Complainant's Signature)

9020 So. Paxton Ave ES 5 4962
(Complainant's Address) (Telephone No.)

STATE OF ILLINOIS } ss.
COUNTY OF COOK }

Sam Palmer
(Complainant's Name Printed or Typed)

being first duly sworn, on _____ oath, deposes and says that he has read the foregoing complaint by him subscribed and that the same is true.

Sam Palmer
(Complainant's Signature)

Subscribed and sworn to before me _____, 19____.

J. McDonough
(Judge or Clerk)

I have examined the above complaint and the person presenting the same and have heard evidence thereon, and am satisfied that there is probably cause for filing same. Leave is given to file said complaint. Warrant issues.

Bail Fixed at $ 6 Months Vandalism

JUDGE _____

STATE OF ILLINOIS) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL - DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS VS. LUTHER SANDERS	CAUSE NO. 648075 THE HONORABLE JUDGE: GLENN T. JOHNSON BRANCH 49

PETITION FOR TRANSCRIPT

MAY IT PLEASE THIS HONORABLE COURT.

COMES NOW, LUTHER SANDERS, PETITIONER PRO. SE. IN THE ABOVE ENTITLED CAUSE AND PETITIONS THIS HONORABLE COURT FOR THE ENTRY OF AN ORDER DIRECTING THE OFFICIAL COURT REPORTER TO FURNISH THIS PETITIONER WITH A COPY OF THIS PETITIONER'S TRANSCRIPT. PETITIONER RESPECTFULLY INFORMS THIS HONORABLE COURT AS FOLLOWS:

1. PETITIONER WAS BROUGHT BEFORE THE HONORABLE JUDGE GLENN T. JOHNSON BRANCH 49, FOR TRIAL, IN THE AFTERNOON OF MONDAY, APRIL 10, 1967.

2. PETITIONER WAS TRIED THEN AND THERE BY THE HONORABLE JUDGE GLENN T. JOHNSON ON APRIL 10, 1967 AND FOUND GUILTY FOR THE OFFENSE OF THEFT.

3. PETITIONER WAS SENTENCED ON APRIL 10 1967 TO SERVE SIX (6) MONTHS ON THE ILLINOIS STATE FARM LOCATED AT VANDALIA ILLINOIS WHEREAT PETITIONER IS NOW INCARCERATED IN THE ACT OF SERVING THE SAID SIX (6) MONTHS SENTENCE.

CONTINUED ON PAGE TWO (2)

PAGE TWO. (2)

CONTINUED FROM PAGE ONE. (1)

PETITIONER NOW PRAYS THIS HONORABLE COURT FOR THE ISSUE OF AN ORDER INSTRUCTING THE COURT REPORTER TO FURNISH THIS PETITIONER WITH A TRANSCRIBED COPY OF THIS PETITIONER'S TRANSCRIPT

FOR SUCH ORDER WITH LEAVE GRANTED TO AMEND PETITIONER WILL EVER PRAY.

RESPECTFULLY SUBMITTED

Luther Sanders

PETITIONER PRO. SE.

STATE OF ILLINOIS
COUNTY OF Fayette

AFFIDAVIT IN VERIFICATION

I LUTHER SANDERS DO DEPOSE AND SAY THAT THE ABOVE PETITION BY ME SUBSCRIBED IS TO THE BEST OF MY KNOWLEDGE AND BELIEF TRUE BOTH IN SUBSTANCE AND IN FACT.

Luther Sanders

AFFIANT.

SUBSCRIBED AND SWORN TO BEFORE ME:
ON THIS 3rd DAY OF May, A.D. 1967.
MY COMMISSION EXPIRES
ON THE 11th DAY OF Feb, A.D. 19 71.

Kathryn Washburn

NOTARY PUBLIC

STATE of ILLINOIS ! SS:
COUNTY OF COOK !

IN THE CIRCUIT COURT OF COOK COUNTY

FORMA PAUPRIS MOTION

MAY IT PLEASE THIS HONORABLE COURT

Comes NOW LUTHER SANDERS who doth depose AND SAY That he is A POOR PERSON: That he has NO PROPERTY NEITHER PERSONAL NOR REAL That he HAS NO FUNDS with which To PROSECUTE SAID CAUSE OF ACT. That he PRAYS this HONORABLE COURT To ALLOW him Ti PROSECUTE SAID CAUSE OF ACT THE SAME AS A POOR PERSON AS PROVEN IN LIKE CASES.

RESPECTFULLY SUBMITTED,
Luther Sanders

FILED
MUNICIPAL COURT OF CHICAGO
DE CIRCUIT COURT, COOK COUNTY

AFFIDAVIT

I LUTHER SANDERS doth depose AND SAY That the Above MOTION by me subscribed is To the best of MY KNOWLEDGE AND belief TRUE Both IN SUBSTANCE AND IN FACT.

Luther Sanders
AFFIANT

Subscribed AND SWORN To before me
ON This 3rd DAY OF May A.D. 1967
MY COMMISSION EXPIRES
ON The 11th DAY OF Feb A.D. 1971
Kathryn Washburn
NOTARY PUBLIC.
Fayette Co, Ill.

THE MUNICIPAL COURT OF CHICAGO
First Municipal District of The Circuit Court of Cook County, Illinois
ROOM 1303 CHICAGO CIVIC CENTER
JOHN S. BOYLE, CHIEF JUDGE EUGENE L. WACHOWSKI, PRESIDING JUDGE

2/133

May 11, 1967

Honorable Glenn T. Johnson
Boys' Court (South)
6100 S. Racine Avenue
Chicago, Illinois

Dear Judge Johnson:

Where a transcript is ordered and a pauper's petition requesting the same, accompanies the request, it is up to the Court to determine whether such transcript is justified.

Enclosed herein is the original file and a copy of the petition.

If you feel justified in ordering the transcript, enter the order on the half-sheet and return to us.

Very truly yours,
Florence B. Rapacz
Florence B. Rapacz
Court Coordinator

Court reporter's mailed transcript directly to Petitioner (on 5/24/67)

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
Julius Sanders

67 MC NO. 647075

CRIMINAL

Felony

T. 2/11 3

DATE	PAPERS FILED AND WRITS ISSUED
APR 10	Information filed
Jan-18-1968	Mandate of Appellate Court Filed
1-22-68	Report of Proceedings Filed

DATE	JUDGE	ORDERS ENTERED
APR 10		Leave to to file Complaint. Def'd Court takes jurisdiction of defendant in court on complaint filed Defendant arraigned. Plea not guilty Defendant waives jury trial Trial by Court. Finding defendant guilty in Manner and Form as Charged in the Information herein. Sentence on finding defendant guilty of Dis't 3 8-1k 1 a 1 Defendant sentenced to Illinois State Farm, Vandalia for term of 6 (Six) Months
MAY 15-67	JOHNSON	Court Reporter ordered to Prepare Transcript

DATE	JUDGE	ORDERS ENTERED

Vandalia

36

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 441

DOUGLAS BRYANT and DORIS MAY BRYANT,

Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS and THE CITY OF CHICAGO,

Respondents,

and

THE PEOPLE OF THE STATE OF ILLINOIS ON THE RELATION OF DOUGLAS BRYANT and DORIS MAY BRYANT,

Petitioner,

vs.

MAURICE W. LEE, MAGISTRATE OF THE MUNICIPAL COURT OF CHICAGO, FIRST MUNICIPAL DISTRICT OF THE CIRCUIT COURT OF COOK COUNTY,

Respondent.

(Petition for a Writ of Certiorari to the Illinois Supreme Court.)

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW.

People of the State of Illinois, et al., vs. *Douglas Bryant, et al.*, Supreme Court of the State of Illinois, General No. 40281, is presently pending in the Supreme Court of the State of Illinois, and no opinion or decision has been rendered thereon.

People ex rel. Douglas Bryant, et al., v. *Maurice W. Lee, Magistrate of the Municipal Court of Chicago, etc.*, Supreme Court of the State of Illinois, General No. 40300, was an original action in *mandamus* which was denied on January 9, 1968.*

JURISDICTIONAL STATEMENT.

The petitioners have prematurely filed a petition for writ of *certiorari* to the Supreme Court of the State of Illinois, in that no final decision or opinion has been rendered by that court as required by Section 1257 (3) of the United States Code.

QUESTIONS PRESENTED.

1) Whether a petition for *certiorari* may be filed where no final opinion or decision of the highest court of a state has been rendered?

2) Whether the petitioners, who were convicted of misdemeanors, are entitled to a free transcript as a matter of right under the Fourteenth Amendment to the United States Constitution?

---

*Original actions in the Supreme Court of the State of Illinois are discretionary and not a matter of right. Constitution of the State of Illinois, Art. VI, Sec. 5.

ARGUMENT

I.

THE PETITION FOR WRIT OF CERTIORARI IS PREMATURE IN THAT NO FINAL OPINION OR DECISION HAS BEEN RENDERED BY THE SUPREME COURT OF THE STATE OF ILLINOIS.

Douglas Bryant and Doris May Bryant, petitioners, appealed to the Supreme Court of the State of Illinois, General No. 40281, from a finding of guilty on misdemeanor charges in the First Municipal District of the Circuit Court of Cook County.

The petitioners filed the record on appeal in that cause on December 14, 1967, but have not as of this date filed their appellants' brief. The appeal is presently pending in the Supreme Court of the State of Illinois.

In that appeal the petitioners can urge the same issues which they urge in the petition for *certiorari*.

Section 1257 of the United States Code provides, in part, as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * *
>
> "(3) By writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

In addition thereto, the petitioners filed an original action in the Supreme Court, General No. 40300, for a writ of *mandamus* as authorized by Article VI, Section 5 of the Constitution of the State of Illinois. Original actions in the Supreme Court of the State of Illinois are completely discretionary, and therefore the denial of said actions does not constitute a decision on the merits.

The Supreme Court of the State of Illinois having not rendered a final decision or opinion, it is submitted that this cause should be dismissed because it has been prematurely filed.

II.

THE GRANT OF DISCRETIONARY POWER TO A TRIAL COURT TO FURNISH A PETITIONER WITH A TRANSCRIPT OF THE REPORT OF PROCEEDINGS, IN A MISDEMEANOR CAUSE, DOES NOT VIOLATE THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The respondents fully concede that since the decision of this Court in *Griffin* v. *Illinois,* 351 U.S. 12, a State is required to furnish a free transcript to any indigent convicted of a felony. However, this principle has not been extended to misdemeanor convictions, and there are compelling reasons why it should not be mandatory but rather discretionary.

In the area of misdemeanor conviction we are generally talking of incarceration for a short period of time. Upon conviction it is discretionary in the State of Illinois and other jurisdictions to release an individual upon his own recognizance bond during the pendency of an appeal. If the trial judge, exercising his discretion, decides that the

past record, the nature of the crime and/or demeanor of the defendant are such so that a recognizance bond should not be issued, it would be of little value to afford said defendant with a transcript of the report of proceedings, for the sentence would in all probability be completed far before any effectual appellate relief could be granted.

Since in most instances effectual relief could not be granted to the defendant even where he was afforded a transcript of proceedings, the State of Illinois submits that each case should be decided by the discretionary action of the trial judge.

CONCLUSION

For the above reasons, respondents respectfully submit that this petition for certiorari be denied.

Respectfully submitted,

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
160 North La Salle Street, Suite 900,
Chicago, Illinois 60601 (346-2000),
Counsel for Respondents.

JOHN J. O'TOOLE,
Assistant Attorney General,
Of Counsel.

PREME COURT, U. S.

DEC 14 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 441

DOUGLAS BRYANT AND DORIS MAY BRYANT,
Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS AND THE CITY OF CHICAGO,
Respondents,

AND

THE PEOPLE OF THE STATE OF ILLINOIS ON THE RELATION OF DOUGLAS BRYANT AND DORIS MAY BRYANT,
Petitioner,

vs.

MAURICE W. LEE, MAGISTRATE OF THE MUNICIPAL COURT OF CHICAGO, FIRST MUNICIPAL DISTRICT OF THE CIRCUIT COURT OF COOK COUNTY,
Respondent.

REPLY TO BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

R. DICKEY HAMILTON,
Attorney for Petitioners.

Of Counsel:
DEVOE, SHADUR, MIKVA & PLOTKIN,
208 South La Salle Street,
Chicago, Illinois 60604,
ANdover 3-3700.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 441.

DOUGLAS BRYANT AND DORIS MAY BRYANT,
Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS AND THE CITY OF CHICAGO,
Respondents,

AND

THE PEOPLE OF THE STATE OF ILLINOIS ON THE RELATION OF DOUGLAS BRYANT AND DORIS MAY BRYANT,
Petitioner,

vs.

MAURICE W. LEE, MAGISTRATE OF THE MUNICIPAL COURT OF CHICAGO, FIRST MUNICIPAL DISTRICT OF THE CIRCUIT COURT OF COOK COUNTY,
Respondent.

REPLY TO BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.[1]

---

1. The cost of printing this Reply is being paid by the Roger Baldwin Foundation of the American Civil Liberties Union, as are all other costs incurred with respect to the filing of the Petition for Certiorari in this case.

Respondents' brief in opposition to the petition for a writ of certiorari is extraordinary.

Respondents apparently contend that although the Illinois Supreme Court considered the question for one and one-half years, in two separate actions, it has made no final decision on the question of whether petitioners are entitled to the transcript of the report of proceedings at their trial. On the merits, respondents contend that "in most instances" Illinois trial courts deny indigent misdemeanants an effective appeal by setting appeal bonds which the indigents cannot post and that, therefore, it would be meaningless to grant transcript to such indigents.

Respondents' statement that petitioners have filed the record on appeal in Case No. 40281 before the Illinois Supreme Court is not true. Although a "short record" has been filed in support of their motions for transcript, the full record on appeal has not been filed. It has not been filed because it should contain the full report of proceedings, which the petitioners have been unable to obtain.

Without the report of proceedings petitioners have been unable to take the initial steps to consummate their appeal. However, the Illinois Supreme Court has certainly made its final ruling with respect to petitioners' right to transcript and it has denied transcript to petitioners both in Case No. 40281 and in the mandamus action, Illinois Supreme Court No. 40300. The fact that mandamus actions before the Illinois Supreme Court may be "completely discretionary" under Illinois law[2] in no way detracts from the fact that a final ruling has been entered in that case denying petitioners the report of proceedings. Petitioners cannot prosecute an adequate appeal without the report of proceedings and it is ludicrous to suggest, considering the several orders entered by the Illinois Supreme Court and

2. Respondents' brief, p. 4.

the many months during which they considered the matter, that the Illinois Supreme Court has not made a final decision denying transcript to petitioners.

Respondents argue that in most cases effectual relief would not be granted to indigent misdemeanants in Illinois even if they were afforded a transcript of the report of proceedings because the Illinois trial courts effectively deny such indigents a meaningful appeal by setting appeal bonds which they cannot post. This may be factually correct. Indeed, one of the respondents, Magistrate Maurice W. Lee, set appeal bonds in this case requiring the indigent defendants (petitioners herein) to deposit $2,000 in order to stay out of jail pending appeal. However, this amount was reduced on review to $25, which was paid by a religious organization. While it may be that in most cases indigent misdemeanants in Illinois are denied an effective appeal because of the appeal bonds set by the Illinois trial courts, this practice will have to be challenged in another case. Petitioners have been denied an effective appeal, not because of an excessive appeal bond, but because they have been arbitrarily denied transcript of the report of proceedings at their trial.[3]

In their concurring opinion in *Marino* v. *Ragen*, 332 U. S. 561 (1947), Justices Rutledge, Douglas and Murphy stated that, "If the federal guarantee of due process in a criminal trial is to have real significance in Illinois, it is imperative that men convicted in violation of their constitutional rights

3. Respondents argue for a rule that the granting of transcript to indigent misdemeanants "should not be mandatory but rather discretionary." (Respondents' brief, p. 4.) As was pointed out in their petition, petitioners were denied transcript solely on the ground that they had not been convicted of felonies. Furthermore, although some Illinois trial courts exercise the power to grant transcript to indigent misdemeanants, their right to do so is not set out in any statute, court rule or published opinion, and nowhere are there any standards or guidelines for the trial courts to follow in exercising this power. (Petition, pp. 14-15.)

have an adequate opportunity to be heard in court." 332 U. S. at 570. It is discomforting that twenty-one years after the *Marino* decision the State of Illinois defends a practice of denying indigent misdemeanants the report of proceedings at their trial on the ground that most of such indigents have already been denied their right to be heard on appeal because of the bonds set by the trial courts.

Respectfully submitted,

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